IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2729 OF 2004

Jay Nalini Co-operative Hsg.Sty. Ltd. .. .. Petitioner
v/s.
Bombay Municipal Corporation & ors. .. Respondents

Mr.K.V.Tembe for petitioner.
Ms.Aruna Savla for res.Nos.1 to 3.
Mr.G.V.Murti for res.Nos.4 to 7.

CORAM : H.L. GOKHALE &
S.R. DONGAONKAR, JJ.

DATED : 3rd April 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. The petitioner is a Co-operative Housing Society which has filed this petition seeking a direction against the Municipal Corporation that it should take action against respondent Nos.4 to 7 under the M.R.T.P. Act ("the Act" for short) The grievance of the petitioner-Society is that these respondents have enclosed their balconies and have put up kitchen platforms therein, as a result whereof the occupation certificate for the added floors is not being issued by the Municipal Corporation.

3. The short facts leading to this petition

are as follows:-

. Though the petition is on behalf of the Society, it is essentially on behalf of the two families viz. S/Shri Sangameshwaran and Ramu who are having majority of the flats in the concerned Society. The building of the Society initially consisted of ground plus two floors wherein these Sangameshwaran, Ramu and respondent Nos.4 to 7 were having their own flats. It appears that subsequently Sangameshwaran and Ramu had added two more floors. The grievance of respondent Nos.4 to 7 is that those floors were added by taking away the entire extra FSI which became available to the Society without the same being made available to respondent Nos.4 to 7.

4. Mr.Tembe, learned Counsel appearing for the petitioner, points out that it is not so and the problem is essentially because of the kitchen platforms which respondent Nos.4 to 7 have put up in the enclosed balcony. It is because of those platforms which is a change of user that the occupation certificate for these added floors is not being given.

5. Mr.Murti, learned Counsel appearing for

respondent Nos.4 to 7, on the other hand, points out that respondent Nos.4 to 7 are occupying flat Nos.1, 3, 5 and 9 and the balconies have been enclosed way back in the year 1989. This is because the flats though sufficient initially, became inadequate as the time passed. It is, therefore, that the balcony has been enclosed and a kitchen has been put up over there to convert the initial one-room-kitchen into two-room-kitchen arrangement.

6. Inasmuch as the petition seeks the action against respondent Nos.4 to 6 under the MRTP Act, Ms.Savla appearing for the Municipal Corporation points out that the necessary notice has been issued under Section 53 of the Act and, therefore, nothing survives as such in the petition.

7. Mr.Murti appearing for respondent Nos.4 to 7, however, points out that this is a case where a sympathetic view deserves to be taken. He, therefore, states that respondent Nos.4 to 7 along with the occupier of flat No.1 will reply to these notices and seek regularisation of the use which the balconies are presently put up.

8. Mr.Tembe appearing for the

petitioner-Society states that the petitioner-Society will forward the replies of these flat-holders with a recommendation that their applications be considered sympathetically.

9. The Municipal Corporation will decide these replies to the notices in accordance with law, but keeping in mind the circumstances in which the change of user has been effected. In the event the change of user is regularised then there will not be any difficulty for the petitioner to obtain the occupation certificate for the added floors. We expect the Executive Engineer (Building Proposals), Eastern Suburb who has given notices under Section 53 of the Act to decide the replies to be forwarded by the concerned flat-holders expeditiously. The concerned flat-holders are expected to apply for regularisation while filing these replies. They may give a proposal supported with an Architect certificate. Depending upon the decision with respect to this regularisation, appropriate decision will be taken on the occupation certificate for the added floors. We expect that also to be done expeditiously.

10. Petition disposed of with the above order.

11. Certified copy expedited.

(H.L. GOKHALE, J.)

(S.R. DONGAONKAR, J.)